THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 27296 of 2005

Dated: 06-02-2006

Between:

M/s Bismilla rice & Flour Mill,

Rep., by its Proprietor Shaik Mohd. Khasim

Gurazala Mandal, Guntur District.

..... PETITIONER

AND

Transmission Corporation of A.P.Limited,

Rep., by its Chief Managing Director,

Vidyut Soudha, Khairatabad,

Hyderabad and two others.

.....RESPONDENTS

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O R D E R:

Heard the learned counsel for both the parties and perused the material on record.

This writ petition is filed seeking a declaration that the provisional assessment notice dated 20-01-2004 issued by the second respondent is arbitrary, illegal and contrary to Section 126 of the Electricity Act, 2003 (for short 'the Act').

The petitioner claims to be a small rice mill situated in Madugula village, Gurazala Mandal, Guntur District, which is having LT Service connection bearing No. 76 (Cat-III) obtained from the first respondent. The impugned notice dated
20-01-2004 was issued by the second respondent alleging that in the inspection conducted by the Assistant Divisional Engineer, Gurazala on 18-01-2004, it was found that though the power supply to the petitioner's rice mill was disconnected due to non-payment of consumption charges and arrears on
31-03-2004, the consumer had illegally restored the power supply to the rice mill and thus committed theft of energy. Accordingly, power supply to the petitioner's rice mill was disconnected on 19-01-2004, and the petitioner was informed that enquiry will be conducted and was also called upon to submit explanation. However, in the impugned notice it was also stated that the value of the energy allegedly pilfered by the petitioner is quantified at Rs.58,697-and if the petitioner is desirous of restoration of power supply it has to pay half of the said amount i.e. Rs.29,348.50ps including reconnection charges.

The learned counsel for the petitioner, while placing reliance upon a judgment of a Division Bench of this Court dated 11-03-2004 in W.A.Nos.452 and 477 of 2004, contends that as per Section 126 of the Act, disconnection of power supply on the ground of alleged default of payment of the amount mentioned in the order of provisional assessment is arbitrary and illegal.

However, the learned standing counsel pointed out that in the case on hand, power supply was disconnected long back on 31-03-2004 but the petitioner had illegally restored power supply and thus committed theft of energy and therefore the disconnection cannot be found fault with.

It is a pure disputed question of fact and therefore requires to be enquired by the competent authority after affording due opportunity to the petitioner to put forth its version. In the absence of such finding, I am not inclined to order restoration of power supply.

It is brought to the notice of this Court that the petitioner has already submitted its objections. In view of the same and having regard to the facts and circumstances of the case, I deem it appropriate to dispose of the writ petition with a direction to the third respondent to complete the final assessment in respect of service connection of the petitioner and to pass appropriate orders in accordance with law as expeditiously as possible. The petitioner is granted liberty to submit further objections, if any within a period of one week from the date of receipt of a copy of this order, in which event the third respondent shall consider the same and pass appropriate orders within a period of two weeks, thereafter. Though the provisional assessment is not set aside, it is made clear that till such time the respondents shall not take any further coercive steps against the petitioner on the basis of the impugned provisional assessment.

The writ petition is accordingly disposed of. No costs.

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G.ROHINI,J

Dated: 06-02-2006

Klp/ghn